



PUBLIC NOTICE

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DA 10-2373
December 17, 2010

DOMESTIC SECTION 214 AUTHORIZATION GRANTED

Domestic Section 214 Application Filed for the Acquisition of Assets of DukeNet Communications, LLC by DukeNet OpCo, LLC

WC Docket No. 10-139

On July 9, 2010, DukeNet Communications, LLC (DukeNet) and DukeNet OpCo, LLC (OpCo) (together, Applicants) filed an application pursuant to section 63.03 of the Commission's rules to consummate a proposed transaction whereby the assets and customers of DukeNet would be assigned to OpCo.¹

On July 29, 2010, the Commission released a public notice accepting the application for streamlined processing.² On August 13, 2010, the Department of Justice, including the Federal Bureau of Investigation, with the concurrence of the Department of Homeland Security (collectively, the Executive Branch Agencies), filed a letter requesting that the Commission defer action on the application while they reviewed potential national security, law enforcement, and public safety issues.³ In response to the request, the Wireline Competition Bureau removed the application from streamlined review.⁴ On December 16, 2010, the Executive Branch Agencies withdrew their request to defer action, stating that they have no objection to the application.⁵

The Wireline Competition Bureau finds, upon consideration of the record, that grant of the application will serve the public interest, convenience, and necessity. Upon consummation of the transaction, the resulting entity will have a market share in the U.S. interstate interexchange market of less than 10 percent and will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier in the U.S.

¹ 47 C.F.R § 63.03; *see* 47 U.S.C. § 214.

² *Domestic Section 214 Application Filed for the Acquisition of Assets of DukeNet Communications, LLC by DukeNet OpCo, LLC*, WC Docket No. 10-139, Public Notice, DA 10-1426 (rel. July 29, 2010).

³ Letter from Tyrone Brown, U.S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 10-139 (filed Aug. 13, 2010).

⁴ *Notice of Removal of Domestic Section 214 Application From Streamlined Treatment*, WC Docket No. 10-139, Public Notice, DA 10-1563 (rel. Aug. 20, 2010).

⁵ Letter from Kimberly M. Schmid, U.S. Department of Justice, to Marlene H. Dortch, FCC, WC Docket No. 10-139 (filed Dec. 16, 2010).

that is not a party to the transaction. In addition, the Applicants will not be dominant with respect to any domestic service.⁶

Consistent with Commission precedent, the Wireline Competition Bureau accords the appropriate level of deference to the Executive Branch Agencies' expertise on national security and law enforcement issues.⁷ Therefore, pursuant to section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214, and section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, the Wireline Competition Bureau hereby grants the application discussed in this Public Notice.

Pursuant to section 1.103 of the Commission's rules, 47 C.F.R. § 1.103, the grant is effective upon release of this Public Notice. Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of this Public Notice.

For further information, please contact Jodie May at (202) 418-0913, Competition Policy Division, Wireline Competition Bureau.

⁶ 47 C.F.R. 63.03(b)(2)(i).

⁷ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing a transfer of control or assignment application in which foreign ownership is an issue. *See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24170-72, paras. 178-82 (1997); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21, paras. 61-66 (1997) (*Foreign Participation Order*), Order on Reconsideration, 15 FCC Rcd 18158 (2000). In assessing the public interest, the Commission considers the record and accords the appropriate level of deference to Executive Branch expertise on national security and law enforcement issues. *See Foreign Participation Order*, 12 FCC Rcd at 23919-21, paras. 61-66.